National Labor Relations Board OFFICE OF THE GENERAL COUNSEL Advice Memorandum

DATE: November 21, 1996

TO: Robert H. Miller, Regional Director, Region 20

FROM: Barry J. Kearney, Associate General Counsel, Division of Advice

SUBJECT: Newspaper & Periodical Drivers and Helpers, IBT, Local 921 (San Francisco Newspaper Agency), Case 20-CB-9819

9019

554-1433-8300

This Section 8(b)(3) case was resubmitted for advice as to whether the Union lawfully refused to execute the allegedly agreed upon collective bargaining agreement, because the parties failed to expressly resolve one issue. (1)

facts

The San Francisco Newspaper Agency ("Employer" or "Agency") produces and distributes two daily newspapers in the San Francisco area, the Examiner and the Chronicle. Teamsters Local 921 ("Union" or "Local 921") represents approximately 600 employees involved in the distribution process.

On November 11, 1994, (2) the Union and the Employer reached agreement on a successor contract. Both parties acknowledge that they agreed to the following language contained in the contractual jurisdiction clause:

In the event a dealership becomes open during the term of this Agreement, the work involved shall be

assigned to bargaining unit employee(s), subject to the following conditions:

•••

(4) The Employer shall provide the Union written notice of any dealership opening subject to this provision. Such notice shall be within ____ days of the knowledge of the Employer of such opening, and shall be 30 days prior to the expiration of any such dealership contract.

Both parties also acknowledge that they never agreed on what to put in the blank concerning the number of days of notice the Employer must give the Union after the Employer has knowledge of the opening of a dealership.

Two days later, on November 13, the Union proposed a 10 day period to fill in the blank in the above notice provision. The Employer rejected the Union's offer and proposed a 30 day notice provision. The parties never reached final agreement on this issue.

After November 13, the Union did not make any further attempts to resolve this issue with the Employer. In fact, the Union brought the contract to a membership vote and the bargaining unit employees ratified the agreement with the blank in it. The Union later denied, on other grounds, that the parties had ever reached a meeting of the minds and refused to execute the ratified contract. Despite extensive discussions with the Employer over a period of many months, the Union never raised the existence of the open notice provision as an issue which had precluded agreement.

action

We conclude that under these circumstances the open notice provision did not prevent full and complete agreement on the contract.

In John Morrell & Co., (3) the Board affirmed a judge's order holding that the employer unlawfully refused to reduce an agreed-upon contract to writing and to sign it. The judge rejected the employer's argument that certain "ambiguities, omissions and unclear language" in the union's proffered draft vitiated a meeting of the minds. (4) In so doing, the judge found it significant that the employer did not act as if these omissions would have remained unresolved. Rather, he concluded that absent the employer's unlawful refusal to execute, "presumably they were matters that would have been ironed out at the time the contract was reduced to final writing for signature." (5)

Similarly in Central Plumbing Company, (6) the Board held that the employer unlawfully refused to sign a collective

bargaining agreement even though the parties had yet to work out the final language of a safety provision. The Trial Examiner noted that the parties acted as if complete agreement had been reached. Unit employees, for instance, ratified the contract without finalized language on the safety provision. After the ratification vote, the parties agreed to flesh out the language at a later date. Viewing the totality of negotiations, the Trial Examiner, affirmed by the Board, noted that "[t]he welder-safety provision certainly was not so substantial or material to that agreement to justify a claim that the contract was incomplete."

Thus, the Trial Examiner concluded that the parties' agreement to work out language later on "in no way vitiated the agreement in effect at that point in time."

(8)

Also in Timber Products Co., (9) the Board held that the parties reached complete and final agreement on a new contract despite their failure to specify all of the administrative details of an agreed-upon pension plan. The Board noted that the employer urged employees to ratify the agreement without telling them that any issues were left to negotiate. As in John Morrell and Central Plumbing, the Board thus found it significant that the respondent itself believed that it had agreed to a complete contract susceptible of enforcement.

In the instant case, the evidence indicates that the parties reached a complete, enforceable agreement despite the existence of

the open notice provision. Initially, it is important to recognize that the parties had resolved all but one aspect of the notice provision. They had agreed that the Employer is obligated to notify the Union of a dealership opening, the circumstances under which notice will be due, and that 30-days notice will be given prior to the expiration of a dealership contract. Thus, the sole issue which remained for final resolution was the length of the notice period should a dealership become open for reasons other than contract expiration. Significantly, the Union acted as if this single issue could and would be resolved after agreement on the contract. Thus, on November 11 Union officials shook hands with the Employer's negotiators, acknowledging that a complete agreement had been reached. Two days later, the Union brought the contract to the membership for ratification knowing that the notice provision remained unresolved at that point. The unit employees then voted to ratify the contract. It is inconceivable that the Union would bring the contract up for a ratification vote if the Union truly believed that the outstanding notice provision vitiated a meeting of the minds. We further note that the Union, despite ample opportunity, neglected to seek a

Under these circumstances, it is reasonable to conclude that the Union considered this single issue to be of negligible impact on the course of bargaining, a final dispute which could and would be resolved as the parties reduced the agreement to writing and executed it. As such, we conclude that the parties had reached a full and complete agreement on November 11 and thus that the Union's refusal to execute the contract violated Section 8(b)(3). (10)

negotiated resolution of the issue after the day of the ratification vote and later failed to even raise the issue to the Employer as

one of the Union's many reasons justifying its contention that the parties had not come to a meeting of the minds.

B.J.K.

In a prior Advice Memorandum in this case, the Region was directed to issue complaint, absent settlement, against the Union for refusing to execute an agreed-upon collective bargaining agreement in violation of Section 8(b)(3). A complete discussion of the facts can be found in the prior memorandum in this case dated May 21, 1996. The Region indicated that they will amend the outstanding complaint to allege a bad faith bargaining allegation, but they have decided not to submit the issue for advice.

- ² All dates are in 1994 unless specified otherwise.
- ³ 268 NLRB 304 (1983).
- ⁴ The omissions involved seniority, hours of work, pension and insurance benefits and the status of certain employees.
- ⁵ Id. at 307.
- ⁶ 198 NLRB 925 (1972), enf'd 492 F.2d 1252 (6th Cir. 1974).
- ⁷ Id. at 929.
- ⁸ Ibid.
- ⁹ 277 NLRB 769, 770-71 (1985).
- 10 [FOIA Exemption 5]. The theory of violation, as set forth above, is that the Union and the Employer came to a complete agreement on a contract with the understanding that the final terms of the notice provision were to be resolved at a later date. This theory and this case is thus distinguishable from Georgia Kraft Company, 258 NLRB 908 (1981), enf'd 696 F.2d 931 (11th Cir. 1983), remanded on other grounds 466 U.S. 901 (1984), in which the parties came to a complete agreement on all terms, without reservation, despite several errors and omissions in a proffered draft which ultimately were the result of the respondent's unlawful refusal to assist in reducing the agreement to writing. Since the parties here evidently chose to leave the open notice provision for finalization at a later date, a Georgia Kraft theory, as articulated in the proposed Amended Complaint set forth above, should not be alleged.